

**Remarks**

Claims 1 and 24-30 have been amended and claims 15-23 have been canceled. Reconsideration and allowance of the pending claims are respectfully requested.

**Claims Rejections Under 35 U.S.C. 101**

**Claims 1-7 rejections**

The Office Action rejected claims 1-7 under 35 U.S.C. 101 because the claims neither tied to a particular machine nor transform underlying subject matter. Applicant has amended claims 1-7 to tie the claimed method to a particular hardware device, namely, processor. Applicant believes that the amended claims meet “machine-or-transform” test In Re Bilski. Reconsideration and withdrawal of the present rejection are respectfully requested.

**Claims 8-14 rejections**

The Office Action rejected claims 8-14 under 35 U.S.C. 101 because the virtual machine monitor appears to be software *per se*, failing to be tangibly embodied or include any recited hardware as part of the system. Applicant respectfully submits that the virtual machine monitor may be implemented as a software module (e.g., codes

stored in a computer readable medium) or a hardware module (e.g., digital and/or analog circuit), or any combinations of the software and hardware modules, which should fall in the scope of the present application and the teachings of the prior art.

Claims 8-14 seek protection of the hardware implementation and any combinations of the hardware and software implements for the virtual machine monitor. Therefore, Applicant believes that claims 8-14 should meet U.S.C. 101 requirement and withdrawal of the present rejection is respectfully requested.

Claims 15-23 rejections

The Office Action rejected claims 15-23 under 35 U.S.C. 101 because the virtual machine monitor appears to be software per se, failing to be tangibly embodied or include any recited hardware as part of the system. Applicant has canceled claims 15-23 and withdrawal of the present rejection are respectfully requested.

Claims 24-30 rejections

The Office Action rejected claims 24-30 because the claims are non-statutory as not being tangibly embodied in a manner so as to be executable. Applicant has amended the subject matter of each of claims 24-30 into “computer-readable storage medium”, which would cover tangible embodiments as disclosed in the specification as well as other tangible embodiments that are apparent to a skilled person. Applicant respectfully submits that “computer-readable storage medium” is regarded as a

statutory subject matter under a PTO guideline for 101. Reconsideration and withdrawal of the present rejection are respectfully requested.

**Claim Rejections under 35 USC 112**

The Office Action rejected claims 1-30 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

As discussed in M.P.E.P. 2173.02, definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

**Claim 1**

The Office Action rejected claim 1 because lines 1-2, 3-4, 5-7 are unclear. Applicant respectfully submits that from the present application disclosure and teachings of the prior art, claim 1 has particularly pointed out and distinctly claimed the subject matter.

- i. Lines 1-2 may be supported by the specification, such as, paragraphs 0002, 0013, 0025 and probably other parts of the specification of the present application. Combining with teachings of the prior art, Applicant believes that Lines 1-2 should be clear to a skilled person and therefore meet the requirement of USC 112. Withdrawal of the present rejection is respectfully requested.
- ii. Lines 3-4 may be supported by the specification, such as, paragraphs 0019, 0026 and probably other parts of the specification of the present application. Combining with the teachings of the prior art, Applicant believes that Lines 3-4 should be clear to a skilled person and therefore meet the requirement of USC 112. Withdrawal of the present rejection is respectfully requested.

Particularly, it should be understood by the skilled person, e.g., based on a dictionary, that “loading” is completely different from “swapping”.

Loading A in B may include that A does not exist in B before the loading and the loading may result in that A exists in B. Further, in an embodiment of the present application, the first scheduler may be unloaded before or after the second scheduler is loaded, or the two schedulers may exist concurrently (See paragraph 0028). However, “Swapping A with B” may include that B works while A does not before

the swapping and the swapping may result in that A works while B does not.

iii. Lines 5-7 may be supported by the specification, such as, paragraph 0020, 0021, 0024, 0029, 0030, 0031 and probably other parts of the specification. Combining with the teachings of the prior art, Applicant believes that Lines 5-7 should be clear to a skilled person and therefore meet the requirement of USC 112. Withdrawal of the present rejection is respectfully requested.

**Claim 2**

The Office Action rejected claim 2 because lines 2-3 and 4-5 are unclear. Applicant respectfully submits that from the present application disclosure and teachings of the prior art, claim 2 has particularly pointed out and distinctly claimed the subject matter.

iv. Lines 2-3 may be supported by the specification, such as, paragraph 0027 and probably other parts of the specification. Combining with the teachings of the prior art, Applicant believes that Lines 2-3 should be clear to a skilled person and therefore meet the requirement of USC 112. Withdrawal of the present rejection is respectfully requested.

v. Lines 4-5 may be supported by the specification, such as, paragraph 0026 and probably other parts of the specification. Combining with the

teachings of the prior art, Applicant believes that Lines 4-5 should be clear to a skilled person and therefore meet the requirement of USC 112. Withdrawal of the present rejection is respectfully requested.

**Claim 3**

The Office Action rejected claim 3 because it is uncertain why a first scheduler is unloaded before a second scheduler. Applicant respectfully submits that from the present application disclosure (especially, lines 4-6 of paragraph 0028 which states an example for a reason of unloading the first scheduler) and teachings of the prior art, claim 3 has particularly pointed out and distinctly claimed the subject matter.

**Claim 4**

The Office Action rejected claim 4 because it is unclear what constitutes a scheduler identifier and so on. Applicant respectfully submits that from the present application disclosure (especially, paragraphs 0020, 0023 and 0029) and teachings of the prior art, claim 4 has particularly pointed out and distinctly claimed the subject matter.

**Claim 5**

The Office Action rejected claim 4 because it is unclear what constitutes a function pointer array and so on. Applicant respectfully submits that from the present

application disclosure (especially, paragraphs 0021, 0023 and 0029) and teachings of the prior art, claim 5 has particularly pointed out and distinctly claimed the subject matter.

**Claim 6**

The Office Action rejected claim 6 because it is unclear what the address is for. Applicant respectfully submits that from the present application disclosure (especially, paragraphs 0024 and 0029) and teachings of the prior art, claim 6 has particularly pointed out and distinctly claimed the subject matter.

**Claim 7**

The Office Action rejected claim 7 because it is unclear how the first scheduler is reactivated. Applicant respectfully submits that from the present application disclosure (especially, lines 12-14 of paragraph 0020, paragraph 0022 may teach embodiments of reactivating the first scheduler) and teachings of the prior art, claim 7 has particularly pointed out and distinctly claimed the subject matter.

**Claim 8 and 24**

For the similar reason proffered in claim 1, withdrawal of the present rejection is respectfully requested.

Claim 9 and 25

For the similar reason proffered in claim 2, withdrawal of the present rejection is respectfully requested.

Claim 10 and 26

For the similar reason proffered in claim 3, withdrawal of the present rejection is respectfully requested.

Claim 11 and 27

For the similar reason proffered in claim 4, withdrawal of the present rejection is respectfully requested.

Claim 12 and 28

For the similar reason proffered in claim 5, withdrawal of the present rejection is respectfully requested.

Claim 13 and 29

For the similar reason proffered in claim 6, withdrawal of the present rejection is respectfully requested.

Claim 14 and 30

For the similar reason proffered in claim 7, withdrawal of the present rejection is respectfully requested.

Claim 24

Claim 24 is claiming the computer readable medium.

**Claims Rejections Under 35 U.S.C. 103 (Chalmer/AAPA)**

The Official Action rejected claims 1, 3-8, 10-14, 24 and 26-30 under 35 USC 103(a) as being unpatentable over Chalmer et al. (US Pat. 7,296,271) in view of Applicant Admitted Prior art (AAPA). Applicant respectfully requests reconsideration and withdrawal of the present rejection.

As discussed in M.P.E.P 2143.03, to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Each of claims 1, 3-8, 10-14, 24 and 26-30 reciting **loading a second scheduler** in the virtual machine monitor **when the virtual machine monitor is running**, is neither taught nor suggested by the combination of Chalmer and AAPA.

Chalmer teaches a method of switching from a first scheduler to a second scheduler selected from a plurality of schedulers for a multitasking operating system (See abstract and claim 2). The Office Action appears to rely on lines 34-67 of column 11 and lines 1-10 of column 12 for the teaching of loading a second scheduler in the multitasking system.

Applicant respectfully submits that the lines 34-55 of column 11 teaches to load the scheduler starting address and stack pointer, which is different from loading the scheduler. Scheduler starting address may be an address to point at the scheduler, but not the scheduler itself. Stack pointer may be a pointer to point at the stack space for the scheduler, but not the scheduler itself either.

Lines 55-67 of column 11 and Lines 1-10 of column 12 teaches that different schedulers may be used, such as, a statistical code profiler, a small scheduler for the system initialization stage, and a complex scheduler for the full operating stage. Although it is stated that “the profiler is installed” or “other forms of schedulers may be as easily installed”, the “install” should be interpreted as “install the scheduler’s address” rather than “install the scheduler itself” as claimed in claim 1. This is because lines 3-5 of column 11 have taught how to “install”, namely, “the profiler is installed by simply swapping out the current scheduler’s address from the scheduler pointer, and

substituting the address of the profile". In other words, to install a scheduler means to substitute the current scheduler's address with a new scheduler's address. Therefore, "installing a scheduler" as taught by Chalmer is different from loading the scheduler.

Applicant further respectfully submits that Chalmer does not teach how to load the plurality of schedulers in the operating system, no saying, loading the plurality of schedulers in the operating system when the operating system is running.

In light of the above, Chalmer teaches away from claims 1, 3-8, 10-14, 24 and 26-30.

AAPA teaches a virtual machine monitor may include a scheduler. However, AAPA teaches nothing about loading a second scheduler in the virtual machine monitor when the virtual machine monitor is running.

Since neither Chalmer nor AAPA teaches **loading a second scheduler** in the virtual machine monitor **when the virtual machine monitor is running**, claims 1, 3-8, 10-14, 24 and 26-30 should be patent over Chalmer in view of AAPA.

#### **Claims Rejections Under 35 U.S.C. 103 (Chalmer/AAPA/Knauerhase)**

The Official Action rejected claims 2, 9 and 25 under 35 USC 103(a) as being unpatentable over the combination of Chalmer and AAPA, and further in view of Knauerhase. Each of claims 2, 9 and 25 include one of claims 1, 8 and 24 as a base claim and are therefore allowable for at least the reasons stated above. Applicant respectfully requests the present rejection of claims 2, 9 and 25 be withdrawn.

**Conclusion**

The foregoing is submitted as a full and complete response to the Official Action. Applicant submits that the application is in condition for allowance. Reconsideration is requested, and allowance of the pending claims is earnestly solicited.

Should it be determined that an additional fee is due under 37 CFR §§1.16 or 1.17, or any excess fee has been received, please charge that fee or credit the amount of overcharge to deposit account #02-2666. If the Examiner believes that there are any informalities, which can be corrected by an Examiner's amendment, a telephone call to the undersigned at (503) 439-8778 is respectfully solicited.

Respectfully submitted,

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